
(1921) 07 CAL CK 0036
In the Calcutta High Court

Ishan Chandra Diasi and Others

APPELLANT

Vs

Ram Prosad Aich and Others

RESPONDENT

Date of Decision : 18-07-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 35

Citation : AIR 1921 Cal 209 : 65 Ind. Cas. 656

Hon'ble Judges : Richardson, J; Lancelot Sanderson, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is a Rule calling upon the opposite party to show cause why the judgment and decree of the Special Judge of Midnapore complained of should not be set aside, or why such other or further order should not be made as to this Court might seem fit and proper.

2. The matter arose in respect of certain applications which were made by the landlords for the settlement of, fair rents u/s 105 of the Bengal Tenancy Act.

3. The Revenue Officer found that the defendants in these cases were ordinary occupancy raiyats. He also found on a comparison of the prices of staple food crops that the maximum enhancement u/s 32(b) was 4 annas in the rupee. He, however, refused to allow the landlords any enhancement on the ground that the lands were subject to inundation as there was no embankment on the river Cossaye and that the crops were damaged and the rents were already high.

4. The Special Judge who heard the appeal, after reciting what the Revenue Officer had found went on to say this: "There are, however, no grounds for refusing to allow the enhancement wholly, in view of Section 35, Bengal Tenancy Act, and the decision in the case of *Guru Charan Nandi v. Sarab Ali* 62 Ind. Cas. 79 : 30 C.L.J. 9 : 23 C.W.N. 1041 and the appellants are entitled to some enhancement. In the circumstances. I allow enhancement at one anna in the rupee."

5. The learned Vakil who supported this Rule, has urged that, the learned Special

Judge has put a wrong interpretation upon Section 35 of the Bengal Tenancy Act and the case to which the learned Judge referred: and he has asked this Court to interpret the Special Judge's judgment as meaning that, although the Revenue Officer had come to the conclusion that the landlords were entitled to no enhancement by reason of the lands being inundated and rents being already high, he, the Special Judge, was bound to allow some enhancement by reason of Section 35 and the decision of this Court in *Guru Charan Nandi v. Sarab Ali* 62 Ind. Cas. 79 : 30 C.L.J. 9 : 23 C.W.N. 1041. In my judgment, that is not the proper interpretation to put upon the learned Judge's judgment. In fact, in my judgment, it is impossible for him to have meant that; in the first place, when one looks at the words of the section it is quite clear what Section 35 means. The section is as follows: "Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable." The "foregoing sections" which are referred to in Section 35 obviously are, amongst others, Section 30 which sets out the conditions under which the landlord may ask for enhancement of rent. The conditions are set out in the headings (a), (b), (c) and (d); (b) is the one which applies to this case, "that there has been a rise in the average local prices of staple food crops during the currency of the present rent." Then, Section 31 deals with the rules as to enhancement on the ground of the prevailing rate. Sections 31A and 31B deal with the same matter. Then we come to Section 32 which sets out the rule as to enhancement on the ground of the use in prices. Section 33 sets out the rules as to enhancement on the ground of the landlord's improvement. Section 34 sets out the rules as to enhancement on the ground of increase in productive powers due to fluvial action. Those sections deal with the four sets of conditions which are enumerated in Section 30 and, then comes Section 35, which I have already read, which is a section of a general nature and the meaning of which, to my mind, is plain. It means, that the learned Special Judge when considering these cases has to take into consideration all the facts of the particular case and has to take into consideration the rules which are set out in the Bengal Tenancy Act relating to the particular application, and then, before he allows an enhancement he must be satisfied that, under the circumstances of the case, the enhancement is fair and equitable. The provision, no doubt, is inserted for the protection of the tenant, because it says: "notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable." In the facts of such a provision, it seems to me impossible that the learned Special Judge has interpreted the decision to which he has referred as meaning that, in spite of the findings of the Revenue Officer with regard to the flooding and the rents being high already, he must allow some enhancement of rent. The passage which is referred to is in the case of *Guru Charan Nandi v. Surab Ali* 62 Ind. Cas. 79 : 30 C.L.J. 9 : 23 C.W.N. 1041, and the passage is at page 13 viz., "Much stress was laid by the learned Pleader for the respondent on the concluding portion of the judgment of the learned Subordinate Judge where he says that the plaintiffs are not entitled

equitably to enhancement of rent. The only ground upon which the learned Subordinate Judge so held is the position of the land by the side of a river and there being no crops grown on it. We do not think that that is what is contemplated by Section 35 of the Bengal Tenancy Act. That section, we think, relates to the amount of assessment and does not refer to the grounds upon which a Court has to determine whether enhancement should be allowed or not." I confess I am not quite clear what the learned Judges had in their minds when they said what I have just read in their judgment, but I am quite clear that they did not decide that the effect of Section 35 was that the learned Special Judge was bound to allow some enhancement of rent even though the Revenue Officer had found that the lands were flooded by the water Page of 30 C.L.J.--[Ed.] from the river periodically and that the rents were already high. In my judgment, the question which the learned Special Judge had to decide was one of fact. As I read his judgment, he decided that question of fact after taking into consideration the findings at which the First Court had arrived and the rules which are laid down in the Bengal Tenancy Act for enhancement of rent in this particular case. I understand the learned Judge to have decided that, although the enhancement would ordinarily be 4 annas in the rupee yet, having regard to the other facts in the case, namely, that the lands were subject to inundation and that the present rents were already high, taking all these facts into consideration, in his judgment, it would not be fair or equitable to allow an enhancement to the extent of 4 annas. Consequently, taking all the facts of the case into consideration, the learned Judge came to the conclusion that it would be fair and equitable to allow an enhancement at one anna in the rupee: and that was the result of his judgment.

6. For these reasons, in my judgment, this Rule must be discharged. We make no order as to costs.

7. This judgment will apply to the other Rules which are accordingly discharged without costs.

Richardson, J.

8. I agree.